



**In the Matter Of:**

**Estate of Harry Smith, III, et al.**

**v.**

**Wilmington Police Department, et al.**

**C.A. # 04-1254-GMS**

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**Transcript of:**

**Charles E. Brittingham**

**August 24, 2005**

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Wilcox & Fetzer, Ltd.  
Phone: 302-655-0477  
Fax: 302-655-0497  
Email: lhertzog@wilfet.com  
Internet: www.wilfet.com

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1 A. That is correct.  
 2 Q. As I understand it, you have talked with  
 3 residents in the area of 5th and Harrison streets, is  
 4 that correct?  
 5 A. Yes.  
 6 Q. Residents have given you their recollection of  
 7 the events that took place on September 13th; is that  
 8 correct?  
 9 A. Yes.  
 10 Q. Can you tell me what residents you have spoken  
 11 with?  
 12 A. Yes. I don't quite recall the names at this  
 13 point, but I do have a list of names. The bulk of the  
 14 community we spoke with.  
 15 Q. When did you speak with them?  
 16 A. We started to speak with them a week after this  
 17 event, so that would be like the 20th, in that area.  
 18 Q. How long did it take you to interview the bulk  
 19 of the residents?  
 20 A. Wow. It's -- week and a half, two weeks.  
 21 Q. Did you take notes during these interviews?  
 22 A. Yes.  
 23 Q. Do you have notes?  
 24 A. Yes, but not with me at this time.

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1 told her not to say too much, so we didn't go into  
 2 indepth. There were houses that had bullet holes in  
 3 them, we talked to -- I don't know if it's the owners,  
 4 but the people who lived there.  
 5 Q. Sure.  
 6 A. Again, I'd have to get the addresses, but -- but  
 7 we thoroughly canvassed that neighborhood.  
 8 Q. I'm sorry. I sort of have gotten away from what  
 9 I was trying to ask you and I'll try again.  
 10 I want to focus on the people who  
 11 contradicted the police version of these events.  
 12 A. Okay.  
 13 Q. And I believe we started out and you told me  
 14 that some of the people who lived on the same side of the  
 15 street as Mr. Gwyn and above him contradicted the police  
 16 version?  
 17 A. Yes. I personally did not see anyone or hear  
 18 anyone even come close to the police version.  
 19 Q. All right. And what about the people on the  
 20 opposite side of the street from Mr. Gwyn, did they  
 21 contradict the police version?  
 22 A. Most of them were not home. They were working  
 23 at that time.  
 24 Q. Working at the time of the interviews or working

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1 A. In this building here, the names of the  
 2 suspects -- not the suspects -- the names of the people  
 3 that we interviewed that wished to tell their side of the  
 4 story, I gave a list of those names to the FBI in this  
 5 building.  
 6 Q. All right. Did you ever prepare a written  
 7 report describing your investigation?  
 8 A. Yes.  
 9 Q. Was that report submitted to the NAACP?  
 10 A. Are you referring to my national office?  
 11 Q. To any office. Let me back up.  
 12 A. Since the case -- the case is still opened, so  
 13 no. The answer is no.  
 14 Q. What have you done with your written report?  
 15 A. We are trying to -- we are trying to see this  
 16 case all the way through to the end.  
 17 Q. Okay.  
 18 A. So the report is still with me.  
 19 Q. Have you given it to anyone yet?  
 20 A. I have discussed this with the legal counsel  
 21 with the NAACP at the national headquarters.  
 22 Q. Have you given the report to anyone else?  
 23 A. No, no. They don't have the report. I  
 24 discussed it with them.

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<p>13</p>	<p>15</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall who said that?</p> <p>3 A. I believe it was more than one person gave me a</p> <p>4 version of that.</p> <p>5 Q. Do you recall who they were?</p> <p>6 A. I would have to double-check notes before I give</p> <p>7 a name because I don't want to say a name if I'm not</p> <p>8 sure.</p> <p>9 Q. Well, can you just estimate for me? Then we'll</p> <p>10 give you an opportunity to double-check or look at your</p> <p>11 notes later, but I'd like to know who you think it might</p> <p>12 be.</p> <p>13 MS. SULTON: I object to the form of that</p> <p>14 question. It is asking him to speculate.</p> <p>15 MR. PARKINS: That's all right.</p> <p>16 BY MR. PARKINS:</p> <p>17 Q. You can speculate.</p> <p>18 A. I choose not to speculate.</p> <p>19 Q. Okay. What did they say?</p> <p>20 A. Okay. The car is coming up the hill, which is</p>
<p>19 Q. Tell me generally what the resident said who</p> <p>20 contradicted the police version of the events.</p> <p>21 A. There was a young man, he's Hispanic of nature,</p> <p>22 was trying to protect his niece. I think she was three</p> <p>23 or four years old. When the shooting started, he jumped</p> <p>24 on her to protect her. When he questioned the</p>	<p>21 up Harrison Street, opposite way. Everybody's running</p> <p>22 around screaming because there's gunfire. The car stops</p> <p>23 pretty much in front of Mr. Gwyn's house, 511. The</p> <p>24 person is slumped over in his seat. The shooting stops.</p>
<p>14</p> <p>1 authorities, when things quieted down, they told him he</p> <p>2 didn't see what he saw and he wanted to tell his side of</p> <p>3 the story. He said he saw the police car come up the</p> <p>4 hill. At first he didn't know what was going on. He</p> <p>5 thought police was chasing someone until he realized they</p> <p>6 was chasing the car.</p> <p>7 Then in his words, all heck broke loose</p> <p>8 with the shooting and that's when he dove on the ground</p> <p>9 to protect his niece.</p> <p>10 Q. Did he tell you anything else?</p> <p>11 A. As far as --</p> <p>12 Q. What happened.</p> <p>13 A. Yeah. This particular guy -- this particular</p> <p>14 guy, he -- he didn't really get in too much. He was</p> <p>15 talking about some other stuff because he had a brother</p> <p>16 that was doing something else crazy. But there were</p> <p>17 others who had told me about the car coming up, slowing</p> <p>18 down, stopping, and the police officers coming behind the</p> <p>19 car shooting.</p> <p>20 Q. Did anybody tell you that the police went to the</p> <p>21 front of the car to shoot?</p> <p>22 A. No.</p> <p>23 Q. Did anyone tell you that the police went to the</p> <p>24 side of the car to shoot?</p>	<p>16</p> <p>1 They walk around. And they heard other shots. They saw</p> <p>2 him put handcuffs on the body and drag him out the car</p> <p>3 and let him lay on the street.</p> <p>4 Q. Did they say how long they let him lay on the</p> <p>5 street?</p> <p>6 A. Yes. For hours. This was one of our big</p> <p>7 sticking points. That was for hours.</p> <p>8 Q. Was he uncovered at the time he was laid on the</p> <p>9 street?</p> <p>10 A. Yes.</p> <p>11 Q. For hours?</p> <p>12 A. Yes.</p> <p>13 Q. Did any of these people tell you that they saw</p> <p>14 the police give Mr. Smith CPR?</p> <p>15 A. No, no one I talked to mentioned anything about</p> <p>16 CPR.</p> <p>17 Q. Did anyone tell you about emergency medical</p> <p>18 technicians arriving at the scene?</p> <p>19 A. Yes. Yes, they did, but that was in reference</p> <p>20 to how long he was laying in the street.</p> <p>21 Q. Well, what did they say?</p> <p>22 A. Well, why did it take so long for them to get</p> <p>23 here? That's what the general population statement was,</p> <p>24 Why did it take so long for the ambulance or the</p>

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17	<p>1 emergency vehicles to get here?</p> <p>2 Q. Did they say how long it took for the emergency</p> <p>3 vehicle to get to the scene?</p> <p>4 A. At least three or four hours.</p> <p>5 Q. Three or four hours?</p> <p>6 A. Yes.</p> <p>7 Q. Did, in your investigation, did you talk to the</p> <p>8 emergency medical technician people?</p> <p>9 A. We made an attempt to, but we were shut down.</p> <p>10 They was told by their people not to talk to us.</p> <p>11 Q. You probably have already told me this and I'm</p> <p>12 not trying to trick you by asking again. I just have</p> <p>13 forgotten.</p> <p>14 A. Sure.</p> <p>15 Q. I know you're kidding, right?</p> <p>16 Mr. Brittingham, did the people who you</p> <p>17 interviewed say where the police were when they were</p> <p>18 doing their shooting?</p> <p>19 A. I've actually got that statement from the chief</p> <p>20 of police.</p> <p>21 Q. What did the chief tell you?</p> <p>22 A. The chief of police drew a diagram for me on our</p> <p>23 first meeting on this issue that the car came up 5th</p> <p>24 Street, stopped, the police had a barricade there. There</p>	19	<p>1 officer shooting?</p> <p>2 A. There is -- I'm going to say yes, in a sense,</p> <p>3 yes.</p> <p>4 Q. Did they tell you whether the police officer at</p> <p>5 the side of the car was in the driver's side or the</p> <p>6 passenger's side?</p> <p>7 A. Driver's side.</p> <p>8 Q. Did you interview people after you had talked to</p> <p>9 the chief?</p> <p>10 A. Yes, because talking to the chief was early on</p> <p>11 in the investigation. I called him up and asked him to</p> <p>12 let's sit down and find out what happened. That was</p> <p>13 within a few days of the incident.</p> <p>14 Q. Was the chief cooperative in the sense that he</p> <p>15 met with you?</p> <p>16 A. Oh, yeah, he met with me. That was no problem.</p> <p>17 Q. Did you find him forthcoming in terms of</p> <p>18 providing you with information?</p> <p>19 MS. SULTON: I'm going to object to the</p> <p>20 form of the question.</p> <p>21 Q. You can answer, Mr. Brittingham</p> <p>22 A. He answered all the questions I asked.</p> <p>23 Q. After you met with the chief, you then</p> <p>24 interviewed residents who lived in the vicinity of 5th</p>
18	<p>1 was no -- well, this is what the chief told me. The car</p> <p>2 stopped and looked at the barricade for the other car</p> <p>3 blocking the road. The driver, Mr. Smith, made a choice</p> <p>4 to drive across or over the sidewalk hitting the other</p> <p>5 car, rammed it out the way to go up Harrison Street.</p> <p>6 At that point -- during all of this the</p> <p>7 police start shooting, shooting when the car first start</p> <p>8 jumping the curb to ride. As he kept moving, they kept</p> <p>9 right on shooting. This is how the innocent bystander</p> <p>10 got shot.</p> <p>11 Q. Did the people you interviewed tell you where</p> <p>12 the police were when they were shooting?</p> <p>13 A. Closer to 5th and -- the intersection of 5th and</p> <p>14 at the bottom of the hill there, 5th and Harrison Street.</p> <p>15 Q. Did they tell you whether they were in front of</p> <p>16 the car, beside the car, or in back of the car?</p> <p>17 A. At that point in the back of the car. No one</p> <p>18 told me nobody was in front of the car.</p> <p>19 Q. Did anyone ever tell you they went to the side</p> <p>20 of the car and fired shots?</p> <p>21 A. As I said earlier, when the car came to a</p> <p>22 complete rest, they said they went to the side of the car</p> <p>23 and heard shots.</p> <p>24 Q. Did the people who heard shots see the police</p>	20	<p>1 and Harrison?</p> <p>2 A. Yes. Mostly on the Harrison Street side, yes,</p> <p>3 between 5th and 6th.</p> <p>4 Q. Did you meet with anybody who lived on</p> <p>5 5th Street?</p> <p>6 A. Actually, I hate to keep saying the young lady</p> <p>7 who got shot, she actually has family on 5th Street, too,</p> <p>8 so that's where she was staying after that. So very</p> <p>9 briefly we spoke to them.</p> <p>10 Q. When you had these interviews, you knew about</p> <p>11 the police version, about there being a barricade across</p> <p>12 5th Street, did you not?</p> <p>13 A. That part of our investigation, yes, because I</p> <p>14 had already spoken to the chief. The chief is --</p> <p>15 Q. I'm sorry. I didn't mean to interrupt you.</p> <p>16 A. The chief is the one who told me about the</p> <p>17 barricade.</p> <p>18 Q. Did anyone that you spoke with dispute the fact</p> <p>19 that there was a barricade across 5th Street?</p> <p>20 A. No. I don't recall anybody objecting to that.</p> <p>21 Q. The chief told you that Mr. Smith had run up</p> <p>22 around the sidewalk to get around the barricade, did he</p> <p>23 not?</p> <p>24 A. Over the sidewalk.</p>

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- 1 Q. Yes.  
2 A. Right.  
3 Q. Did anyone that you spoke with dispute that?  
4 A. Dispute that?  
5 Q. Yes.  
6 A. No. They all said that he was trying to get  
7 away from the police.  
8 Q. Now, did the chief tell you that in doing so  
9 Mr. Smith hit a white vehicle, a jeep?  
10 A. Said he hit a vehicle, yes.  
11 Q. Did anyone that you spoke with dispute that?  
12 A. No.

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**PAGES 123 - 130 OF THE APPENDIX  
ARE PAGES FROM DEFENDANT DEMPSEY'S  
STATEMENT ON 3/8/2004  
SENT TO THE COURT UNDER SEAL**